

## **§ 535.802**

(i) Any new conference agreement or any modification to an existing conference agreement that does not comply with the requirements of this section shall be rejected pursuant to § 535.601 of this part.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by § 535.801 may be made to the particular ratemaking section.

### **§ 535.802 Service contracts.**

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Act.

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001. Voluntary guidelines shall be kept confidential in accordance with § 535.608 of this part. Use of voluntary guidelines prior to their submission is prohibited.

### **§ 535.803 Ocean freight forwarder compensation.**

No conference or group of two or more ocean common carriers may:

(a) Deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of

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compensation paid to an ocean freight forwarder; or

(b) Agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

## **Subpart I—Penalties**

### **§ 535.901 Failure to file.**

Any person operating under an agreement, involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, that has not been filed and that has not become effective pursuant to the Act and this part is in violation of the Act and this part and is subject to the civil penalties set forth in section 13(a) of the Act.

### **§ 535.902 Falsification of reports.**

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable agreement information and/or reporting requirements pursuant to subparts E and G of this part, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

## **Subpart J—Paperwork Reduction**

### **§ 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget

## Federal Maritime Commission

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(OMB) for each agency information collection requirement in the following table:

Section	Current OMB control No.
535.101 through 535.902 .....	3072-0045

### APPENDIX A TO PART 535—INFORMATION FORM AND INSTRUCTIONS

#### INFORMATION FORM INSTRUCTIONS

1. All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through V of this Form. Sections I and V must be completed by all such agreements. In addition, sections II, III and IV must be completed, as applicable, in accordance with the authority contained in each agreement. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party.

2. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and *TEU* means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Form, the terms “entire geographic scope of the agreement” or “agreement-wide” refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as op-

posed to the term “sub-trade,” which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

#### SECTION I

Section I applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section. The authorities listed in part 4 of this section do not necessarily include all of the authorities that must be set forth in an agreement filed under the Act. The specific authorities between the parties to an agreement, however, must be set forth, clearly and completely, in a filed agreement in accordance with 46 CFR 535.402.

##### Part 1

State the full name of the agreement.

##### Part 2

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties’ business activities as ocean common carriers in the foreign commerce of the United States, and the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

##### Part 3

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

##### Part 4(A)

Identify whether the agreement authorizes the parties to discuss, or agree upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge.

##### Part 4(B)

Identify whether the agreement authorizes the parties to establish a joint service.

##### Part 4(C)

Identify whether the agreement authorizes the parties to pool cargo traffic or revenues.

##### Part 4(D)

Identify whether the agreement authorizes the parties to discuss, or agree on, any service contract matter.

##### Part 4(E)

Identify whether the agreement authorizes the parties to discuss or agree on capacity